

the review and delay the hearing. If the prehearing case review is not completed before the date of the hearing, the case will be sent to the administrative law judge unless a favorable revised determination is in process or you and the other parties to the hearing agree in writing to delay the hearing until the review is completed.

(b) *When a prehearing case review may be conducted.* We may conduct a prehearing case review if—

- (1) Additional evidence is submitted;
- (2) There is an indication that additional evidence is available;
- (3) There is a change in the law or regulation; or
- (4) There is an error in the file or some other indication that the prior determination may be revised.

(c) *Notice of a prehearing revised determination.* If we revise the determination in a prehearing case review, we shall mail written notice of the revised determination to all parties at their last known address. We shall state the basis for the revised determination and advise all parties of their right to request a hearing on the revised determination within 60 days after the date or receiving this notice.

(d) *Revised determination wholly favorable.* If the revised determination is wholly favorable to you, we shall tell you in the notice that the administrative law judge will dismiss the hearing request unless a party requests that the hearing proceed. A request to continue must be made in writing within 30 days after the date the notice of the revised determination is mailed.

(e) *Revised determination partially favorable.* If the revised determination is partially favorable to you, we shall tell you in the notice what was not favorable. We shall also tell you that the hearing you requested will be held unless you, the parties to the revised determination and the parties to the hearing tell us that all parties agree to dismiss the hearing request.

[45 FR 52081, Aug. 5, 1980, as amended at 73 FR 76943, Dec. 18, 2008]

§ 404.942 Prehearing proceedings and decisions by attorney advisors.

(a) *General.* After a hearing is requested but before it is held, an attorney advisor may conduct prehearing

proceedings as set out in paragraph (c) of this section. If after the completion of these proceedings we can make a decision that is fully favorable to you and all other parties based on the preponderance of the evidence, an attorney advisor, instead of an administrative law judge, may issue the decision. The conduct of the prehearing proceedings by the attorney advisor will not delay the scheduling of a hearing. If the prehearing proceedings are not completed before the date of the hearing, the case will be sent to the administrative law judge unless a fully favorable decision is in process or you and all other parties to the hearing agree in writing to delay the hearing until the proceedings are completed.

(b) *When prehearing proceedings may be conducted by an attorney advisor.* An attorney advisor may conduct prehearing proceedings if you have filed a claim for benefits based on disability and—

- (1) New and material evidence is submitted;
- (2) There is an indication that additional evidence is available;
- (3) There is a change in the law or regulations; or
- (4) There is an error in the file or some other indication that a fully favorable decision may be issued.

(c) *Nature of the prehearing proceedings that may be conducted by an attorney advisor.* As part of the prehearing proceedings, the attorney advisor, in addition to reviewing the existing record, may—

- (1) Request additional evidence that may be relevant to the claim, including medical evidence; and
- (2) If necessary to clarify the record for the purpose of determining if a fully favorable decision is warranted, schedule a conference with the parties.

(d) *Notice of a decision by an attorney advisor.* If the attorney advisor issues a fully favorable decision under this section, we shall mail a written notice of the decision to all parties at their last known address. We shall state the basis for the decision and advise all parties that an administrative law judge will dismiss the hearing request unless a party requests that the hearing proceed. A request to proceed with the

hearing must be made in writing within 30 days after the date the notice of the decision of the attorney advisor is mailed.

(e) *Effect of actions under this section.* If under this section, an administrative law judge dismisses a request for a hearing, the dismissal is binding in accordance with § 404.959 unless it is vacated by an administrative law judge or the Appeals Council pursuant to § 404.960. A decision made by an attorney advisor under this section is binding unless—

(1) A party files a request to proceed with the hearing pursuant to paragraph (d) of this section and an administrative law judge makes a decision;

(2) The Appeals Council reviews the decision on its own motion pursuant to § 404.969 as explained in paragraph (f)(3) of this section; or

(3) The decision of the attorney advisor is revised under the procedures explained in § 404.987.

(f) *Ancillary provisions.* For the purposes of the procedures authorized by this section, the regulations of part 404 shall apply to—

(1) Authorize an attorney advisor to exercise the functions performed by an administrative law judge under §§ 404.1520a and 404.1546;

(2) Define the term “decision” to include a decision made by an attorney advisor, as well as the decisions identified in § 404.901; and

(3) Make the decision of an attorney advisor subject to review by the Appeals Council under § 404.969 if an administrative law judge dismisses the request for a hearing following issuance of the decision, and the Appeals Council decides to review the decision of the attorney advisor anytime within 60 days after the date of the dismissal.

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 10, 2011, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the FEDERAL REGISTER.

[60 FR 34131, June 30, 1995, as amended at 63 FR 35516, June 30, 1998; 64 FR 13678, Mar. 22, 1999; 64 FR 51893, Sept. 27, 1999; 72 FR 44765, Aug. 9, 2007; 73 FR 76944, Dec. 18, 2008; 74 FR 33328, July 13, 2009]

§ 404.943 Responsibilities of the adjudication officer.

(a)(1) *General.* Under the procedures set out in this section we will test modifications to the procedures we follow when you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether you are under a disability as defined in § 404.1505 is at issue. These modifications will enable us to test the effect of having an adjudication officer be your primary point of contact after you file a hearing request and before you have a hearing with an administrative law judge. The tests may be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 404.906. The adjudication officer, working with you and your representative, if any, will identify issues in dispute, develop evidence, conduct informal conferences, and conduct any other prehearing proceeding as may be necessary. The adjudication officer has the authority to make a decision wholly favorable to you if the evidence so warrants. If the adjudication officer does not make a decision on your claim, your hearing request will be assigned to an administrative law judge for further proceedings.

(2) *Procedures for cases included in the tests.* Prior to commencing tests of the adjudication officer position in selected site(s), we will publish a notice in the FEDERAL REGISTER. The notice will describe where the specific test site(s) will be and the duration of the test(s). We will also state whether the tests of the adjudication officer position in each site will be conducted alone, or in combination with the tests of the modifications to the disability determination procedures which we conduct under § 404.906. The individuals who participate in the test(s) will be assigned randomly to a test group in each site where the tests are conducted.

(b)(1) *Prehearing procedures conducted by an Adjudication Officer.* When you file a request for a hearing before an administrative law judge in connection with a claim for benefits based on disability where the question of whether